



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 2**

**[ET Docket No. 15-170; FCC 15-135]**

**Radio Frequency Devices, FCC Form 740 Temporary Suspension**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; temporary suspension.

**SUMMARY:** This document temporarily waives the requirements of the Commission's rules that govern the submission of information associated with FCC Form 740 concerning imported Radio Frequency (RF) devices. U.S. Customs and Border Protection (CBP) is implementing a new electronic filing system which is scheduled to become fully operational by December 2016. In light of steps taken related to the transition to the new CBP system, parties importing RF devices will lose the ability to electronically file the required FCC information. The Commission does not believe that it would serve the public interest to establish an alternative means for importers to submit this information with us during the pendency of the rulemaking.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Brian Butler, Office of Engineering and Technology, (202) 418-2702.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, ET Docket No. 15-170, FCC 15-135, adopted October 16, 2015 and released October 19, 2015. The full text of this document is available on the Commission's Internet site at [www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

## **Synopsis of the Suspension Order**

1. The Commission took action to temporarily waive the requirements in §§ 2.1203 and 2.1205 of the Commission's rules that govern the submission of information in connection with imported Radio Frequency (RF) devices, effective July 1, 2016, through December 31, 2016, for the following reasons:

2. Section 2.1203 of the Commission's rules states that no RF device may be imported unless the importer or ultimate consignee (or their designated customs broker) declares that the device meets the conditions of entry set forth in our importation rules. Section 2.1205 provides two ways to make this declaration. At ports of entry where electronic filing with the U.S. Customs and Border Protection (CBP) is not available, the importer completes FCC Form 740 and attaches a copy to its customs import papers. Where electronic customs filing is available, the importer may submit the information electronically as part of its entry documentation submission to CBP. Currently, nearly all submissions are made electronically through the CBP's Automated Commercial System (ACS), and very few paper filings are submitted.

3. CBP is deploying a new electronic filing system, the Automated Commercial Environment (ACE), which will not have the capability for importers to submit the FCC-required Form 740 information electronically. FCC-related importation filings can continue to be submitted electronically via ACS or paper until July 1, 2016. According to the current CBP schedule, as of July 1, 2016, CBP will no longer accept filings made via ACS.

4. The Commission adopted a Notice of Proposed Rulemaking (NPRM) in the above-captioned proceedings to update the rules that govern the evaluation and approval of RF devices, 80 Fed. Reg. 46900 (August 6, 2015). In the NPRM, the Commission proposed to amend § 2.1203 and remove § 2.1205, thereby eliminating the declaration and associated filing requirements. While the ongoing rulemaking may ultimately result in the elimination, modification, or retention of the §§ 2.1203 and 2.1205 requirements, the overall rulemaking proceeding is quite complex and it is possible that the

Commission will be unable to reach and publish a final determination before July 1, 2016, the date upon which CBP will no longer accept the electronic filing of FCC Form 740s via ACS.

5. If the Commission retains or modifies the Form 740 information filing requirement, parties will be precluded from filing electronically after July 1, 2016 outside of the ACE system. The ACE system would have to be modified to render that system capable of accepting FCC Form 740s, which would require appreciable amount of time and expense and may not be able to be implemented by July 1. This would mean that for some period of time after July 1, all the Form 740 filings would be made via paper. Such a result would be impractical. The Commission estimated that it would receive approximately 20,000 such forms each week, with the same number of forms submitted to CBP. In addition, numerous importers would also have to file with FDA or other agencies that may regulate a given device. Given the circumstances, the Commission found that, absent a waiver, there would be significant burdens associated with the ACE implementation for Form 740, for the CBP and FCC. If the Commission ultimately eliminates the Form 740 requirements, any efforts to modify ACE to accommodate Form 740 will have been unnecessary. On the other hand, if the Commission determines to require the Form 740 information filing, the necessary changes to the ACE can be made at that time.

6. The timing of the Commission's open proceeding also introduces considerable regulatory uncertainty for the importation community that further supports the need for a waiver. Based on discussions with manufacturers with considerable importation volumes and import brokers and brokers' associations, the Commission determined that it could take a number of months for the members of the importation community to tailor their existing documentation and related processes to any new importation regime – even one that lifts burdens. Accordingly, this community needs to know whether its members should begin making the necessary preparations for compliance with a paper-based regime in July, or whether they can continue using their existing processes with some assurance that they will not be expected to make a flash cut to a paper filing process come July.

7. Section 1.3 of the Commission's rules provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." For the above stated reasons, the Commission found good cause to temporarily waive the above-described filing requirements in §§ 2.1203 and 2.1205 of the rules effective July 1, 2016, and extending for six months. Assuming that the waiver remains necessary as of July 1, the Commission anticipates that any difficulties associated with not gathering data through Form 740 will be relatively limited in time and scope. The Commission will work with CBP to draw on other data to satisfy any informational needs that are currently provided through the operation of §§ 2.1203 and 2.1205. If the Commission decides to retain the requirement that importers submit some or all of the information required by §§ 2.1203 and 2.1205, it will set forth appropriate revised filing procedures at that time. To the extent that a waiver remains necessary as of July 1, our action only affects the manner in which the Commission collects the information about imported RF equipment that is associated with the requirements of §§ 2.1203 and 2.1205. The general proscription against importation of non-authorized equipment is unaffected and will remain fully in effect.

8. For the foregoing reasons, the Commission will temporarily waive the requirements of §§ 2.1203 and 2.1205, effective July 1, 2016. The waiver will remain in effect through December 31, 2016. The Commission also delegated authority to the Office of Engineering and Technology to extend this date, but no later than the effective date of any decision regarding §§ 2.1203 and 2.1205 in the NPRM proceeding.

9. Pursuant to sections 1, 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 301, 302, 303(e), 303(f), and 303(r), and Section 1.3 of the Commission's rules, 47 CFR Section 1.3, that §§ 2.1203 and 2.1205 of the Commission's rules and Regulations, ARE TEMPORARILY WAIVED, effective July 1, 2016, to the Federal Communications Commission.

Marlene Dortch,

**Secretary.**

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